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09/888,899	06/25/2001	Gert W. Bruning	US010297 (7790/45)	1204

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EXAMINER

BORISSOV, IGOR N

ART UNIT PAPER NUMBER

3639

DATE MAILED: 06/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/888,899  
Filing Date: June 25, 2001  
Appellant(s): BRUNING, GERT W.

**MAILED**

JUN 13 2006

**GROUP 3600**

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John C. Fox  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 3/27/2006 appealing from the Office action mailed 7/18/2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

Lys et al.	US 6,211,626	Apr. 3, 2001
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Yablonowski et al.	US 6,535,859	Mar. 18, 2003
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Jack P. Friedman Dictionary of Business Terms, 3<sup>rd</sup> edition, 2000

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lys et al. (US 6,211,626) in view of Yablonowski et al. (US 6,535,859).**

**Independent Claims**

**Claim 1.** Lys et al. (hereinafter Lys) teaches a method for current control of an LED lightning assembly, comprising:

installing a lighting system for a customer (C. 7, L. 1-4);

measuring the intensity of illumination generated by the lighting system (C. 46, L. 19-22; C. 9, L. 55-58);

wherein change in said illumination is achieved by controlling the amount of current supplied (consumed) to the lighting system (C. 6, L. 60-66), thereby indicating correlation between energy consumed and lumens produced;

and wherein the term "*customer*" indicates a buyer of a product or service (Dictionary of Business Terms, 3<sup>rd</sup> edition, by Jack P. Friedman, Ph.D., CPA; 2000; page 159) thereby suggesting the "charging" step.

Lys does not specifically teach determining a customer light usage fee based on the lumens.

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Yablonowski et al. (Hereinafter Yablonowski) teaches a method for monitoring lighting systems, comprising:

measuring power consumed by the installed system (C. 1, L. 64-65); determining customer usage fee based on said measurement (C. 1, L. 66 – C. 2, L. 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lys to include determining a customer light usage fee based on the power consumed, as disclosed in Yablonowski, because this would provide funds for the business to operate.

**Claim 5.** Lys teaches said method for current control of an LED lightning assembly, comprising:

installing a lighting system for a customer (C. 7, L. 1-4);

measuring changes of light spectrum generated by the lighting system (C. 46, L. 19-22; C. 9, L. 55-58);

wherein change in said light spectrum is achieved by controlling the amount of current supplied (consumed) to the lighting system (C. 6, L. 60-66), thereby indicating correlation between energy consumed and changes in light spectrum produced;

and wherein the term “customer” indicates a buyer of a product or service (Dictionary of Business Terms, 3<sup>rd</sup> edition, by Jack P. Friedman, Ph.D., CPA; 2000; page 159) thereby suggesting the “charging” step.

Lys does not specifically teach determining a customer light usage fee based on the lumens.

Yablonowski teaches said method for monitoring lighting systems, comprising:

measuring power consumed by the installed system (C. 1, L. 64-65); determining customer usage fee based on said measurement (C. 1, L. 66 – C. 2, L. 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lys to include determining a customer light usage fee based on the power consumed, as disclosed in Yablonowski, because a business needs funds to operate.

**Claim 10.** Lys teaches a system for current control of an LED lightning assembly, comprising:

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means for measuring the intensity of illumination generated by the lighting system (C. 46, L. 19-22; C. 9, L. 55-58);

wherein change in illumination is achieved by controlling the amount of current supplied (consumed) to the lighting system (C. 6, L. 60-66), thereby indicating straight correlation between energy consumed and lumens produced;

and wherein the term "*customer*" indicates a buyer of a product or service (Dictionary of Business Terms, 3<sup>rd</sup> edition, by Jack P. Friedman, Ph.D., CPA; 2000; page 159) thereby suggesting the "charging" means.

Lys does not specifically teach means for determining a customer light usage fee based on the lumens.

Yablonowski teaches said system for monitoring lighting systems, comprising:

means for measuring power consumed by the installed system (C. 1, L. 64-65); and means for determining customer usage fee based on said measurement (C. 1, L. 66 – C. 2, L. 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lys to include means for determining a customer light usage fee based on the power consumed, as disclosed in Yablonowski, because a business needs funds to operate.

#### **Dependent Claims**

**Claims 2 and 6.** Said method wherein the lighting system includes at least one LED (Lys; C. 9, L. 45; and reasoning applied to claims 1 and 5).

**Claims 3 and 7.** Said method wherein said measuring is conducted by at least one photodiode (Lys; C. 46, L. 4; and reasoning applied to claims 1 and 5).

**Claims 4, 8 and 11.** Installing an input device to allow customer control of the lighting system (Lys; C. 13, L. 10).

**Claim 9.** Lys teaches:

measuring changes of light spectrum generated by the lighting system (C. 46, L. 19-22; C. 9, L. 55-58);

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installing an input device to allow customer control of the lighting system (Lys; C. 13, L. 10);

wherein change in said light spectrum is achieved by controlling the amount of current supplied (consumed) to the lighting system (C. 6, L. 60-66), thereby indicating correlation between energy consumed and changes in light spectrum produced;

and wherein the term "*customer*" indicates a buyer of a product or service (Dictionary of Business Terms, 3<sup>rd</sup> edition, by Jack P. Friedman, Ph.D., CPA; 2000; page 159) thereby suggesting the "charging" step.

Lys does not specifically teach determining a customer light usage fee based on the lumens.

Yablonowski teaches said method, comprising: measuring power consumed by the installed system (C. 1, L. 64-65); determining customer usage fee based on said measurement (C. 1, L. 66 – C. 2, L. 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lys to include determining a customer light usage fee based on the power consumed, as disclosed in Yablonowski, because a business needs funds to operate.

**Claim 12.** Lys teaches:

means for measuring changes of light spectrum generated by the lighting system (C. 46, L. 19-22; C. 9, L. 55-58);

wherein change in said light spectrum is achieved by controlling the amount of current supplied (consumed) to the lighting system (C. 6, L. 60-66), thereby indicating correlation between energy consumed and changes in light spectrum produced;

and wherein the term "*customer*" indicates a buyer of a product or service (Dictionary of Business Terms, 3<sup>rd</sup> edition, by Jack P. Friedman, Ph.D., CPA; 2000; page 159) thereby suggesting the "charging" means.

Lys does not specifically teach means for determining a customer light usage fee based on the lumens.

Yablonowski teaches said system for monitoring lighting systems, comprising:

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means for measuring power consumed by the installed system (C. 1, L. 64-65); and means for determining customer usage fee based on said measurement (C. 1, L. 66 – C. 2, L. 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lys to include means for determining a customer light usage fee based on the power consumed, as disclosed in Yablonowski, because a business needs funds to operate.

**Claim 13.** Lys teaches:

means for selecting a preprogrammed pattern of light to be emitted from the lighting system (C. 13, L. 6-23);

means for measuring changes of light spectrum generated by the lighting system (C. 46, L. 19-22; C. 9, L. 55-58);

wherein change in said light spectrum is achieved by controlling the amount of current supplied (consumed) to the lighting system (C. 6, L. 60-66), thereby indicating correlation between energy consumed and changes in light spectrum produced;

and wherein the term “customer” indicates a buyer of a product or service (Dictionary of Business Terms, 3<sup>rd</sup> edition, by Jack P. Friedman, Ph.D., CPA; 2000; page 159) thereby suggesting the “charging” means.

Lys does not specifically teach means for determining a customer light usage fee based on the lumens.

Yablonowski teaches said system for monitoring lighting systems, comprising:

means for measuring power consumed by the installed system (C. 1, L. 64-65); and means for determining customer usage fee based on said measurement (C. 1, L. 66 – C. 2, L. 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lys to include means for determining a customer light usage fee based on the power consumed, as disclosed in Yablonowski, because a business needs funds to operate.

## **(10) Response to Argument**



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In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both Lys and Yablonowski teach method and system for installing a lighting system for a customer. Both Lys and Yablonowski employ the term "customer", which indicates a buyer of a product or service (Dictionary of Business Terms, 3<sup>rd</sup> edition, by Jack P. Friedman, Ph.D., CPA; 2000; page 159). Therefore, installing a lightning system to *the customer* in Lys suggests installing a lightning system to *the buyer* of said system. Yablonowski was applied for the step of charging the customer usage fee based on measured power consumed by installed lightning system. The motivation to combine the references to include charging a customer a fee for services rendered would be to generate funds for the business to operate.

In response to the applicant's argument that the prior art fails to disclose charging a fee which is based on lumens generated or changes in the lightning spectrum generated, Examiner points out that in order to obtain from the lightning system installed any lumens at all, current has to be supplied to said lightning system. Lys explicitly states:

"The lightning assembly of the present invention ... includes a modular LED unit for illumination within a range of divers environments. The LED units includes, ... a light module having an LED system for generating a range of colors within a color spectrum and a processor for *controlling the amount of current supplied to the LED system, so that a particular amount of current supplied thereto generates a corresponding color within the color spectrum*. The manner in which the LED unit may be used includes ...*controlling the amount of electrical current to the LED system, so as to generate a*

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*color within a color spectrum*, for instance, the visible spectrum. (Lys; C. 6, L. 60 – C. 7, L. 7). As per “*lumens generated*” feature per se, Lys teaches: “the processor 16 *controls the intensity* of different color individual LEDs...” (C. 9, L. 55-56).

Therefore, Lys establishes a correlation between lumens generated or changes in the lightning spectrum generated and power used for this purposes. Yablonowski was applied for charging the customer a usage fee based on power consumed by installed lightning system. Accordingly, the combination discloses charging a fee, which is based on lumens generated or changes in the lightning spectrum generated.

In response to the applicant’s argument that Lys fails to show the installation of the lightning system for the customer, it is noted that Lys does, in fact, teach this feature. Specifically, Lys teaches: “The manner in which the LED unit may be used includes *initially placing the modular LED unit having the light module within an environment*” (C. 7, L. 1-4).

In response to the applicant’s argument that Lys fails to show that any measurements are made to determine the amount of energy consumed, it is noted that Yablonowski discloses this feature. In response to the applicant’s argument that Yablonowski fails to disclose change in lumens generated or change in light spectrum, it is noted that Lys discloses this feature. At this point, Examiner stipulates that in response to applicant’s arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

#### **(11) Related Proceeding(s) Appendix**

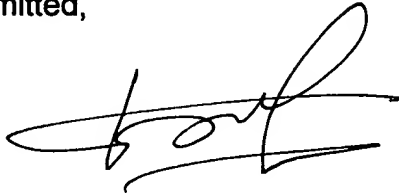
No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Igor N. Borissov



Conferees:

John W. Hayes



**JOHN W. HAYES**  
**SUPERVISORY PATENT EXAMINER**

Hyung Sough

